IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos.11581,11588 & 11589 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AKAR DEVELOPERS & 3 - Petitioner(s)
Versus
GUJARAT REVENUE TRIBUNAL- AHMEDABAD. & 10 - Respondent(s)

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Appearance :
MR KK TRIVEDI for Petitioner(s) : 1 - 4.
NOTICE SERVED BY DS for Respondent(s) : 1 - 11.
MR MENGDEY, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 11/07/2006

COMMON ORAL JUDGMENT

1. Rule. Mr.Mengdey, learned AGP waives service of notice of Rule for Respondents No.1, 2, 3, and

4. So far as the remaining respondents are concerned, pursuant to the order passed by this Court on 22.6.2006, they have chosen not to appear, though they have been served as per the affidavit of direct service. It further appears that the revision is preferred by the State Government and as per the petitioners, the land is purchased by the petitioners from those private respondents and they would be supporting the case of the petitioners and even before the Tribunal, they did not remain present when the matter was heard, because they have lost interest over the land as the transfer had taken place. Therefore, in view of the final order being passed by this Court today, they would not be affected aversely.

2. The short facts of the case are that the petitioners claim that they have purchased the land admeasuring hectare 0.86 sq. mtr. 92 bearing Block No.392 of Survey No.425 of Village Pal, Taluka Choryasi. It appears that the land was initially held by Bhagwatibhai Makanbhai Patel and others and it was held as a restricted

tenure. The application was made on 20.4.1991 for converting the land into old tenure. The Mamlatdar and ALT considered the application under Section 70(o) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “the Act”) and vide order dated 4.5.1991 the restrictions over the land were deleted and it was converted into old tenure land. It appears that the Deputy Collector (Land Reforms) had taken up the matter in suo motto revision being Tenancy Revision Case No.121 of 1991, but the said revision as per the order dated 30.12.1991 was dismissed and the order of the Mamlatdar and ALT was confirmed. Against the said order of the Deputy Collector, revision was preferred by the State before the Tribunal being Revision Application No.230 of 1994. It appears that the revision came to be heard before the Tribunal and at the time when the revision was heard, the learned Counsel, who was representing the opponents – original land holders, declared “no instruction” and the Tribunal proceeded ex-parte and thereafter as

per the judgement dated 30.12.2005 of the Tribunal the revision is allowed and the order of the Deputy Collector and of the Mamlatdar are set aside and the restrictions over the land as per Section 43 of the Act are continued. The petitioners herein claim to have purchased the said land in the year 2004 and 2002 as mentioned in the concerned petitions. The grievance of the petitioners is that no opportunity of hearing was given to the petitioners by the Tribunal before passing the order or, in any case, the petitioners were affected by the order of the Tribunal and they were not heard and, therefore, the petitioners are aggrieved by the said order of the Tribunal and, therefore, this petition.

3. It may be recorded that this Court, with a view to ascertain as to whether any interim order operates pending proceedings before the Tribunal, directing the maintenance of status-quo or otherwise, the learned Counsel appearing for the petitioners was directed to disclose the said aspect. Thereafter on 2.6.2006,

Mr.Trivedi, learned Counsel appearing for the petitioners, declared that no interim order was passed in the revision before the Tribunal. There is no other material produced before this Court to show any interim order was passed by the Tribunal pending the revision and, therefore, this Court has to proceed on the basis that no interim orders were in existence pending the revision before the Tribunal.

4. It is true that the original landholders were parties in the concerned revision before the Tribunal. However, neither the original landholders, nor their Advocate have disclosed before the Tribunal that the lands are already sold by them to the petitioners. Though the aforesaid aspect of transfer is pending the revision before the Tribunal, the fact remains that if any adverse order is passed by the Tribunal in the revision the purchasers, who are occupying the land, will be adversely affected. The record further shows that the Advocate of the original landholders of the land, who were parties to the proceedings before the Tribunal

declared “no instructions” and since the advocate wanted to retire, intimation was given to his clients.

5. Mr.Mengdey, learned AGP has declared before the Court that in view of the panchnama dated 10.7.2006 drawn by Talati of Village Pal the land in question is an open land and no construction is made and only grass has grown over the land. Therefore, it appears that the land has further not changed its position, except the transfer in favour of the petitioners.

6. As the order of the Tribunal is to adversely affect the petitioners, who are purchasers of the land in question and as the petitioners were not heard by the Tribunal before passing the final order, I find that if the matter is remanded to the Tribunal for rehearing of the revision after giving opportunity of hearing to the petitioners concerned in the petitions, the same would meet with the principles of natural justice. The Tribunal, at the time when the revision is reheard, may examine the aspect as

to whether the principles of lis pendens should be made applicable qua the purchase made by the petitioners or that the petitioners can be said as bonafide purchasers or not or that in view of the transfer having taken place pending the proceedings in revision, the appropriate final order may be required to be passed qua the land in question, keeping in view the subsequent development of the matter. Since the matter is yet to be finalized by the Tribunal. I find it proper to leave the matter at that stage, leaving to the proper exercise of the discretion by the Tribunal at the time when the revision is reheard and appropriate orders are passed.

7. In view of the above, the impugned orders passed by the Tribunal in concerned revisions are quashed and set aside on the ground of breach of principles of natural justice and it is further directed that the concerned revisions shall stand restored to the file of the Tribunal. The petitioners will be allowed to be impleaded as party in the proceedings of the Tribunal. The Tribunal shall give an opportunity of hearing

and shall decide the revision afresh, after taking into consideration all the aspects, including the development pending the revision qua the property in question and shall pass appropriate orders as early as possible, preferably within a period of six months from the date of receipt of the order of this Court. Until the revision is finally decided by the Tribunal, the status-quo over the land in question qua the title and possession shall be maintained by the petitioners as well as the Government authority.

8. The petitions are partly allowed to the aforesaid extent. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs. Direct service is permitted.

11.7.2006 **(Jayant Patel, J.)**

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